Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 10, 1995

Ms. Laura S. Portwood
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1207

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26960.

The City of Houston ("the city") received a request for the following information:

1. what streets, if any, in the city of Houston have been resurfaced since January 26, 1992;

2. if all pedestrian walks crossing curbs were made readily accessible to and usable by disabled persons for all streets resurfaced since January 26, 1992;

3. if there are any streets scheduled to be resurfaced at this time or in the near future which do not include plans to make all pedestrian walks along the way readily accessible to and usable by disabled persons at the same time the street is resurfaced; and

4. if the city of Houston has completed its ADA self evaluation and transition plan. If so, please provide me with a copy of each.

You say the city is making some of the requested information available to the requestor. You maintain that the city is not required to do research or answer questions.

The Open Records Act requires a governmental body to make available to the public information it collects, assembles or maintains, with certain enumerated exceptions. *See* Gov't Code § 552.021(a). Thus, the Open Records Act does not require the city to answer questions posed by the requestor. *See* Open Records Decision No. 555 (1990) at 1.

Based on section 552.103(a) of the Government Code, the city seeks to withhold from required public disclosure the following information: a list of the Houston streets resurfaced from January, 1992, to the present (June 9, 1994), a list (dated June 8, 1994) of neighborhoods targeted for possible street resurfacing in the next 12-18 months, a representative sample of resurfacing contracts with contract terms relating to curb cuts, and representative samples of drawings for resurfacing contracts.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You inform us that the United States Department of Justice ("the DOJ") is investigating a complaint against the city, alleging violations of the Americans with Disabilities Act of 1990, ("the ADA"), 42 U.S.C. § 12132.

You say the complaint is still pending before the DOJ. You say the DOJ is reviewing documents submitted by the city in an effort to reach a settlement of this matter. Assistant City Attorney Timothy Lignoul states that if the representative of the Department of Justice is not satisfied that the city is in compliance with the ADA, and the city refuses to take the steps necessary to be in compliance, the DOJ would be forced to sue the city. Mr. Lignoul states that if the representative is satisfied, the representative will forward a proposed settlement.

This office has previously recognized that the pendency of a complaint of discrimination before the Equal Employment Opportunity Commission indicates a reasonable likelihood of litigation for purposes of section 3(a)(3) of V.T.C.S. article 6252-17a, the predecessor of section 552.103(a) of the Government Code. *See* Open Records Decision Nos. 366 (1983), 270 (1981), 266 (1981). We note that section 35.174 of title 28 of the Code of Federal Regulations authorizes the DOJ, in cases in which a public entity declines to enter into voluntary compliance negotiations or in which negotiations are unsuccessful, to refer a matter to the Attorney General for appropriate action. We, therefore, conclude that the pendency of a complaint under the ADA before the DOJ establishes that litigation is reasonably anticipated for purposes of section 552.103(a) of the Government Code. We also conclude that the information relates to that complaint. Accordingly, the city may withhold the requested information under section 552.103(a) of the Government Code.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a).[1]

We also note that the applicability of section 552.103(a) ends once the pending DOJ complaint has been resolved. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/JP/rho

Ref.: ID# 26960

Enclosures: Submitted documents

cc: Ms. Helen Malveaux
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[1]In that regard, we note that the city has provided the DOJ a copy of its transition plan and draft self-evaluation. Thus, if the city has not already done so, it must release a copy of the transition plan and the self-evaluation.